IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA	)	
	)	NO. 3:18-cr-00352
v.	)	JUDGE RICHARDSON
	)	
LONNELL J. FOSTER	)	

ORDER

Before the Court is Defendant's Motion to Suppress. (Doc. No. 22, the "Motion"). Via the Motion, Defendant seeks to suppress the evidence and his statements obtained in connection with the search of a motel room on April 6, 2018. Defendant argues the search was unlawful because law enforcement did not have valid consent to search the motel room since his friend, Maria Rodriguez, did not have authority to consent to the search of the room and, alternatively, her consent was not voluntarily given. Additionally, Defendant argues that law enforcement obtained his statements unlawfully because police violated his *Miranda* rights when they questioned him a second time, after he invoked his right to remain silent the first time he was questioned.

"The Fourth Amendment generally prohibits the warrantless entry of a person's home, whether to make an arrest or to search for specific objects." *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990) (citations omitted). These Fourth Amendment protections apply also to an occupant of hotel room, even though he or she is merely a guest, not an owner, of the room. *United States v. Caldwell*, 518 F.3d 426, 429 (6th Cir. 2008) (citing *Stoner v. California*, 376 U.S. 483, 490 (1964)). Law enforcement may conduct a warrantless search of a home or hotel room where "voluntary consent has been obtained, either from the individual whose property is searched, [] or from a third party who possesses common authority over the premises[.]" *Rodriguez*, 497 U.S. at 181 (citations omitted). However, "a physically present inhabitant's express refusal of consent to a police search

is dispositive as to him, regardless of the consent of a fellow occupant." *Georgia v. Randolph*, 547 U.S. 103, 122-23 (2006).

The government bears "[t]he burden of establishing that a third party possesses common [or "actual"] authority to consent to a search[.]" *United States v. Gillis*, 358 F.3d 386, 390 (6th Cir. 2004) (citing *Rodriguez*, 497 U.S. at 181). "Even if a third party does not possess actual common authority over the area that was searched, the Fourth Amendment is not violated if the police relied in good faith on a third party's apparent authority to consent to the search." *Id*. (citing *Rodriguez*, 497 U.S. at 188-89).

"Apparent authority is judged by an objective standard." *Id*. at 390-91 (citing *Rodriguez*, 497 U.S. at 188-89). The question at issue is whether "the facts available to the officer[s] at the moment warrant a man of reasonable caution in the belief that the consenting party had authority over the premises[.]" *Rodriguez*, 497 U.S. at 188 (citation, ellipses, and internal quotation marks omitted). If so, the search is valid. *Id*. at 189.

To determine whether an individual's consent was voluntary, a district court must look at the totality of the circumstances and examine the following factors: "the age, intelligence, and education of the individual; whether the individual understands the right to refuse to consent; whether the individual understands his or her constitutional rights; the length and nature of detention; and the use of coercive or punishing conduct by the police." *United States v. Worley*, 193 F.3d 380, 386 (6th Cir. 1999) (citation omitted).

The Fifth Amendment provides that a defendant in a criminal case cannot be compelled to be a witness against himself. Consistent with that right, in *Miranda v. Arizona*, 384 U.S. 436, 478–79 (1966), the Supreme Court held "if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent." The

Miranda rule is limited to "custodial interrogations," which the Supreme Court has defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in a significant way." *Oregon v. Mathiason*, 429 U.S. 492, 494 (1977). If a suspect unambiguously invokes his right to remain silent, law enforcement officers must cease all questioning. *Berghuis v. Thompkins*, 560 U.S. 370, 382 (2010).

"[T]he admissibility of statements obtained after the person in custody has decided to remain silent depends under *Miranda* on whether his 'right to cut off questioning' was 'scrupulously honored.'" *Michigan v. Mosley*, 423 U.S. 96, 104, 96 S. Ct. 321, 326, 46 L. Ed. 2d 313 (1975). The Court considers several factors when determining whether Defendant's right to cut off questioning was scrupulously honored, including:

> (1) whether police advised the defendant of his *Miranda* rights at the first interrogation,
> (2) whether police immediately ceased the interrogation upon defendant's request,
> (3) whether police resumed questioning after a significant period of time, and
> (4) whether police provided new *Miranda* warnings at the successive interviews.

Davie v. Mitchell, 547 F.3d 297, 310 (6th Cir. 2008) (citing *Mosley*, 423 U.S. at 105–06). It is also relevant if the later questioning was about the same crime or a different crime. *Id*.

After reviewing the briefs, the above-stated standards, and the evidence and argument presented at the evidentiary hearing on November 26, 2019, the Court has made the following rulings as announced, and for the reasons stated on the record, at the evidentiary hearing.

The Court **DENIES in part and GRANTS in part** Defendant's Motion to Suppress (Doc. No. 22). The Court **DENIES** the Motion with respect to the fruits of the search of the hotel room and the Court **GRANTS** the Motion with respect to Defendant's statements made while in custody.

IT IS SO ORDERED.

Eli Richardson

ELI RICHARDSON
UNITED STATES DISTRICT JUDGE